

September 26, 2024

By ECF

The Honorable Robert M. Levy
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Leticia and Yovany v. United States of America, Case No. 1:22-cv-7527 (NGG) (RML)

Dear Magistrate Judge Levy:

The Asylum Seeker Advocacy Project (“ASAP”) and Quinn Emanuel Urquhart & Sullivan, LLP represent Plaintiffs Leticia and Yovany in the above-referenced Federal Tort Claims Act (“FTCA”) action. We write on behalf of all parties to respectfully submit a joint status report in advance of the September 30, 2024 status conference.

I. Joint Discovery Plan (Dkt. No. 79)

After discussion and in accordance with the rulings Your Honor made during the September 9, 2024 status conference, the parties submitted a [Proposed] Joint Discovery Plan on September 20, 2024 (Dkt. No. 79). The parties respectfully request that Your Honor endorse the Plan, which sets forth the parties’ agreement regarding the deliberative process privilege (“DPP”) dispute as well as amended pretrial discovery deadlines. In particular, the parties reproduce the DPP section, which contemplates specific assistance from the Court, below:

By September 30, 2024, the United States shall indicate, for each “base document” over which plaintiffs challenged the United States’ claim of deliberative process privilege (“DPP”), whether the United States will release or maintain its DPP claim, as discussed during the September 9, 2024 status conference. If the United States maintains its DPP claim over any of the challenged base documents, Defendant will submit to Plaintiffs, by October 9, 2024, a letter brief of points and authorities for its continued invocation of the DPP over each such document, and Plaintiffs shall submit a response, and provide both parties’ positions to Magistrate Judge Levy’s chambers by email, by October 16, 2024.

Thereafter, Magistrate Judge Levy will promptly issue the Court's ruling on each of the remaining DPP disputes.

Dkt. No. 79 at 2.

II. Status of Other Discovery Matters

Following the September 9, 2024 status conference, the Government agreed to produce the El Paso Border Patrol Sector regional common discovery as soon as it receives the set and estimates that it will be produced by October 1, 2024. As confirmed during the September 9, 2024 status conference, any follow-on discovery requests related to the documents included in this discovery set (with the exception of questions regarding such documents during depositions) will be subject to Plaintiffs' showing of need and proportionality.

Further, in addition to their notice for the deposition of John Kelly, discussed in the next paragraph, Plaintiffs have served notices for depositions of five government officials and a Rule 30(b)(6) deposition. The parties have confirmed dates for three of those depositions in October and November. The Government is working with its agency clients to identify and contact the remaining officials and has indicated it will identify multiple designees and serve written objections to Plaintiffs' notice of the Rule 30(b)(6) deposition.

Finally, as noted in previous joint status reports, Plaintiffs have sought to take the deposition of former Secretary of Homeland Security John Kelly, serving a subpoena demanding his attendance at a deposition on July 12, 2024 in Washington D.C. The Government moved to quash the subpoena and for a protective order in the U.S. District Court for the District of Columbia on July 11, 2024. *In re Subpoena of John Kelly*, Case No. 1:24-mc-00084-TNM, Dkt. No. 1 (D.D.C.). Plaintiffs opposed the motion and concurrently moved to transfer the motion to this Court. The parties have completed their briefing on both motions and await the ruling of the District Court for the District of Columbia.

Thank you for the Court's time and attention to this matter.

Respectfully submitted,

/s/ Zane Muller

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